

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4152 of 2017 (O&M)

Date of decision : September 11, 2017

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Saroj

.....Appellant

Versus

Rajeev Kumar and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. M.S Kathuria, Advocate for the appellant.

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RITU BAHRI, J.

C.M No. 10766-C of 2017

C.M is allowed subject to all just exceptions.

C.M No. 10768-C of 2017

Prayer made in the application filed under Section 5 of the Limitation Act is for condonation of delay of 57 days in filing the present appeal.

For the reasons stated in the application, delay of 57 days in filing the present appeal is condoned. C.M is allowed.

RSA No. 4152 of 2017

Present regular second appeal has been filed against the judgment and decree dated 31.3.2017 passed by the District Judge, Jhajjar whereby the appeal against the judgment and decree dated 11.8.2016 passed

by the Civil Judge (Senior Division), Jhajjar was allowed. Vide the judgment and decree dated 11.8.2016 passed by the trial Court, suit filed by Rajeev Kumar, plaintiff-respondent no.1 (hereinafter referred to as 'the plaintiff') against Rajni defendant no.1-respondent no.2 and Saroj defendant no.2-appellant (hereinafter referred to as defendant no.2) for declaration and possession by way of specific performance of contract and permanent injunction as consequential relief was decreed for recovery of Rs.1,50,000/- along with interest @ 6% pa from the date of filing of the suit until the amount has been paid.

Briefly stated, the facts of the case are that initially suit for possession by way of specific performance of contract and permanent injunction as consequential relief was filed by plaintiff Rajeev Kumar against defendant no.1 Rajni with the averments that defendant no.1 Rajni is owner in possession of a plot measuring 14-7/9sq. Yards having a room in it fully detailed and described in para no.1 of the plaint. On 27.3.2006, she agreed to sell suit property to the plaintiff for sale consideration of Rs.1,60,000. She executed an agreement to sell in favour of the plaintiff and received a sum of Rs.1,50,000/- from him as the earnest money. Rest of the sale consideration was agreed to be paid on the date of registration of the sale deed which was agreed to be executed and registered on 26.3.2007. On 26.3.2007, with mutual consent of both the parties, the date for execution of the sale deed was extended up to 25.9.2007 and again on 25.9.2007, the date was extended up to 24.9.2008. It was alleged that on 24.9.2008, the plaintiff along with balance sale consideration and other expenses visited the office of Sub Registrar, Jhajjar for execution and registration of the sale deed but defendant no.1 Rajni did not turn up to

perform her part of the contract and the plaintiff got his presence marked in the office of Sub Registrar, Jhajjar on 24.9.2008.

Notice of the suit was given to defendant no. 1 Rajni who put in appearance in the Court through Shri Udai Bhan, Advocate who filed power of attorney on her behalf. However on 16.2.2012, when the case was fixed for filing written statement and last opportunity was granted for this purpose, none appeared on behalf of defendant no.1-Rajni and accordingly, she was proceeded against ex parte. Application for amendment of plaint and impleading Smt. Saroj Devi as necessary party to the suit was filed with the averments that defendant no.1-Rajni has sold the suit property to Smt. Saroj vide registered sale deed No. 2605 dated 9.9.2008 and the said sale deed is illegal, null and void as there was an agreement in favour of the plaintiff regarding the suit property at the time of execution of the sale deed dated 9.9.2008. The application was allowed and accordingly Smt. Saroj was impleaded as defendant no.2. An amended plaint was filed by the plaintiff and the sale deed No. 2605 dated 9.9.2008 was challenged alleging the same to be illegal, null and void. Defendant no.2 Saroj denied the case of the plaintiff and filed her written statement stating therein that it seems that plaintiff might have advanced a loan of Rs.1,50,000/- to defendant no.1 Rajni and he might have got executed some documents for securing repayment of his loan because after payment of Rs.1,50,000/- out of Rs.1,60,000/-, when only Rs.10,000/- remained to be paid, there was no reason to extend the time of execution of sale deed up to 25.9.2007. Additional pleas regarding locus standi of the plaintiff to file the suit, limitation, delay and laches, estoppel were also raised.

Following issues were framed by the trial Court:

- 1. Whether defendant agreed to sell the plot in dispute to the plaintiff for consideration of Rs.1,60,000/- on dated 27.2.2006? OPP.*
- 2. Whether plaintiff paid Rs.1,50,000/- to defendant no.1 on dated 27.2.2006 as earnest money? OPP.*
- 3. Whether the plaintiff has already been ready and willing to perform his part of agreement, if so, as to what effect? OPP.*
- 4. Whether defendant no.2 is bona fide purchaser of plot in dispute by dint of registered sale deed? OPP.*
- 5. Whether the suit of plaintiff is time barred? OPD.*
- 6. Whether plaintiff has no locus standi to file the suit? OPD.*
- 7. Relief.*

After hearing arguments of counsel for the parties and appreciating the evidence available on the record, trial Court decreed the suit of the plaintiff for recovery of Rs.1,50,000/- along with interest @6% per annum from the date of filing of the suit till the payment.

Feeling aggrieved with the impugned judgment and decree dated 11.8.2016 passed by Civil Judge (Sr. Divn.), plaintiff preferred an appeal before the lower appellate Court. Vide the judgment of the lower appellate Court, appeal was allowed and the judgment of the trial Court was set aside.

Heard counsel for the parties. Execution of the agreement to sell dated 27.3.2006 was proved by the plaintiff by examining Anil Kumar Saini, Advocate as PW-2 who stated that agreement dated 27.3.2006 (Ex.P-1) was scribed by him. Plaintiff had also examined Sumit Gupta, Advocate who appeared as PW-3 and tendered his affidavit Ex.PW3/A to the effect that on 27.3.2006, Rajni had agreed to sell the suit property in favour of the plaintiff and she had executed an agreement to sell in favour of the plaintiff which was signed by him also and the total sale consideration was fixed at Rs.1,60,000/-, out of which Rs.1,50,000/- was paid as earnest money in his presence and the date for execution of the sale deed was fixed as 26.3.2007. It was the case of the plaintiff that date for execution of the sale deed was further extended up to 24.9.2008. The plaintiff himself appeared as PW-1 and tendered his affidavit EX.PW-1/A reiterating the averments as pleaded by him in the plaint. The execution of the agreement stood proved. The plaintiff further proved that vide writings Ex.P-2 and Ex.P-3, date of execution of the sale deed was extended with mutual consent of both the parties. The plaintiff in his cross-examination had explained the reason for extending the time for execution of the sale deed and stated that there was a room in the suit property and the same was being used by defendant no.1 as Godown and she could not arrange for another place. Moreover on 24.9.2008, plaintiff appeared before the office of Sub-Registrar, Jhajjar for the purpose of executing the sale deed, but defendant no.1 Rajni did not turn up. To prove the same, he had placed on file application (Ex.P4) and affidavit (Ex.P-5) duly attested by Executive Magistrate, Jhajjar.

The Trial Court has accepted the above said evidence of the

plaintiff, however, the suit of the plaintiff was decreed for recovery of Rs.1,50,000/- along with interest @ 6% per annum keeping in view that the sale deed in favour of defendant no.2 dated 9.9.2008 is a registered document and the plaintiff did not challenge the said sale deed. However, the lower Appellate Court in its judgment observed that this observation is incorrect as the plaintiff in the plaint had specifically pleaded that sale deed no. 2605 dated 9.9.2008 executed by defendant no.1 in favour of defendant no.2 is wrong, illegal, null and void and not binding on the rights of the plaintiff. The date for execution and registration of the sale deed in favour of the plaintiff was 24.9.2008. Thus, the sale deed dated 9.9.2008 was executed in favour of defendant no.2 during subsistence of agreement dated 27.3.2006 (Ex.P1) executed in favour of the plaintiff. It was further observed that defendant no.2 in her cross-examination stated that she had no conversation with defendant no.1 Rajni or her husband regarding purchase of the suit property. She has also stated that she did not see any title of the suit property in favour of defendant no.1 prior to purchase of suit property. She stated that her husband might have seen the same. However, her husband Prem Chand DW-1 stated that when the sale deed was executed in favour of his wife, he had returned the original sale deed to defendant no.1- Rajni. There is no explanation as to why the document of title was returned to defendant no.1 when suit property was purchased by his wife. The original sale deed in favour of defendant no.1 has been produced by the plaintiff before the trial Court and this falsifies the stand of defendant no.2. Moreover, as per the agreement to sell in favour of defendant no.2, the payment of Rs.1,20,000/- was made in the year 2007 itself. However, no copy of such agreement has been placed on file. Moreover, it is not

explained as to why the sale deed was not executed in the year 2007 when the entire sale consideration was paid in the year 2007 itself.

On a specific query put by the Court, counsel for the appellant (defendant no.2) could not explain as to how, the price of the suit property could be Rs.1,20,000/- when the total consideration was fixed at Rs.1,60,000/- at the time of execution of agreement to sell dated 27.3.2006 (Ex.P-1).

No ground is made out to interfere in the findings of facts made by the lower appellate Court. In view of all that has been discussed above, present regular second appeal is dismissed.

September 11, 2017
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No